

Congress of the United States
House of Representatives
Washington, DC 20515

July 7, 2004

Honorable Robert B. Zoellick
U.S. Trade Representative
600 17th Street N.W.
Washington, D.C. 20508

Dear Mr. Ambassador:

We write to you with a concern related to a copyright provision in the Australia-U.S. Free Trade Agreement ("FTA"). We support strong copyright protections and measures to combat piracy; at the same time, we also believe that trade agreements support the ability of audio and audio-visual performers to retain their intellectual property rights.

In that regard, we are concerned that one provision of the Australia-U.S. FTA could be used to undermine such rights. Accordingly, we would like to urge that USTR indicate its opposition to using the provision in that manner and that the provision not be included in future agreements. Further, we ask that USTR affirm that it does not interpret the provision to apply to the moral rights or equitable remuneration rights of performers.

The provision at issue is paragraph 6, of section 17.4 of the FTA. This provision appears to obligate both Parties to the FTA to respect transfers of rights under contracts of employment in either Party. In the United States, such contracts could result in some works being considered as "works for hire." If the language of this provision is misused to obligate the Government of Australia to recognize and approve "work for hire" rules, legitimate claims by U.S. performers to royalties and other funds that may be established for their benefit in Australia would be subverted.

Such an expansion — and extraterritorial application — of the U.S. "work for hire" doctrine does not appear essential or integral to valid U.S. trade policy objectives, which include simplifying rules regarding transfers of copyright ownership in order to protect US copyrights. In fact, such "work for hire" rules do not appear to have any counterpart in international copyright agreements to which the United States is a party.

Finally, we would note that the provision at issue is also contained in the recent FTAs with Singapore and Chile, as well as other recently negotiated FTAs. This fact makes the points noted above even more essential.

We look forward to your response to this issue that is so vital to U.S. performers and other copyright holders.

Sincerely,







